

CONSUMER ACTION NETWORK

Of, By and For Deaf and Hard of Hearing Americans

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Federal Communications Commission
Office of Secretary

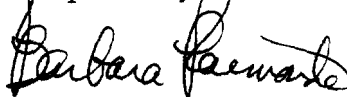
William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street NW
Washington, DC 20554

Dear Mr. Caton:

The Consumer Action Network (CAN) submits these reply comments to the Federal Communications Commission on the Notice of Proposed Rulemaking on Closed Captioning and Video Description of Video Programming, MM Docket No. 95-176. CAN, a coalition of 19 national organizations of, by, and for deaf and hard of hearing people, addresses advocacy and legislative issues important to our constituency. Such issues include protecting the rights of deaf and hard of hearing persons, improving quality of life, empowering consumer leadership and self-representation, and ensuring equal access to education, employment, communication, technology, and community life.

CAN thanks the Federal Communications Commission for its commitment to access for all Americans.

Respectfully submitted,



Barbara Raimondo, J.D.
Legislative Consultant

Enclosures

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In the Matter of)

Closed Captioning and Video)

Description of Video Programming)

Implementation of Section 305 of the)

Telecommunications Act of 1996)

MM Docket No. 95-176

Reply Comments of
the Consumer Action Network
on the Notice of Proposed Rulemaking

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
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**Reply Comments of
the Consumer Action Network**

I. Introduction

The Consumer Action Network (CAN) submits these reply comments to the Federal Communications Commission on its Notice of Proposed Rulemaking on Closed Captioning and Video Description (NPRM).¹ CAN, a coalition of national organizations² of, by, and for deaf and hard of hearing people, addresses advocacy and legislative issues important to our constituency. Such issues include protecting the rights of deaf and hard of hearing persons, improving quality of life, empowering consumer leadership and self-representation, and ensuring equal access to education, employment, communication, technology, and community life. In March 1996, CAN submitted comments on closed captioning in response to the Commission's Notice of Inquiry (NOI) on this subject.³ We also submitted comments on the Notice of Proposed Rulemaking.

Closed captioning of video programming is essential to making this programming accessible to the 28 million Americans who are deaf or hard of

¹ *In the Matter of Closed Captioning and Video Description of Video Programming*, MM Docket No. 95-176, Notice of Proposed Rulemaking, FCC 97-4.

² Please see signature page for a list of CAN members.

³ *In the Matter of Closed Captioning and Video Description of Video Programming*, MM Docket No. 95-176, Notice of Inquiry, FCC 95-484.

hearing. Insertion of closed captioning must be thought of as integral to the production and provision of video programming, the same way the audio track is. We urge the Commission to promulgate rules that will encourage this. We eagerly await the implementation of the closed captioning provisions of the Telecommunications Act of 1996.

II. Responsibility for Captioning

In our earlier comments we recommended that responsibility for compliance rest with programming providers, who can then contract with producers to ensure that material is captioned.⁴ Although commenters including the National Association of Broadcasters (NAB) recommend that this responsibility be placed on producers, the NAB does indicate support for our position. NAB states, "If, however, the Commission intends by its proposal only to require that stations be responsible for captioning on non-exempt programming they produce and for contracting for captioning on programming they purchase, that sort of requirement may not be unreasonable."⁵ Assuming that such contracts are enforced and captioning is done in compliance with Commission rules, we believe that the NAB and CAN share common ground in this area.

III. Transition Period

In its NPRM the Commission sought comment on its proposed eight year transition schedule and also a 10 year transition schedule.⁶ The comments of the National Cable Television Association (NCTA) are representative of comments made in support of these proposals. NCTA emphasizes the "challenges to attaining a significantly higher degree of captioning across-the-board." NCTA explains, "Many networks are

⁴Comments of CAN at 2.

⁵Comments of NAB at 2.

⁶NPRM at ¶ 41.

inexperienced in the captioning area, and lack relationships with established captioning agencies. They also have not developed sponsorship relationships with advertisers and have not been the recipients of governments grants. Further, they lack in-house captioning staff or equipment that will enable them to caption in a cost-effective manner. And they present many hours of new and old programming each day that is not currently captioned.”⁷

We do not find such arguments compelling support for an eight to ten year transition period. Elsewhere, NCTA points out that 24 percent of basic cable and the most widely distributed 6 premium networks is captioned, and for premium programming the amount is as high as 80 percent.⁸ This indicates that providers *are* experienced in this area and *do* have relationships with established captioning agencies. While they may not have sponsorship relationships with advertisers for the purpose of captioning, they do have those relationships for other purposes. And while they may not have received government grants for captioning in the past, an industry as sophisticated as the video programming industry surely can obtain information from the Department of Education on the captioning grant programs supported by the Department. In-house caption staff or equipment can be obtained. It is true that these providers present many hours of new and old programming each day that is not currently captioned. But depending how the Commission’s proposed eight year transition schedule is implemented, the basic cable providers mentioned by NCTA who caption 24 percent of their material might not have to provide any additional captioning at all for a full two years from the effective date of the rules. Premium channels mentioned by NCTA who caption 80 percent of their material might

⁷Comments of NCTA at 8.

⁸*Id.* at 4.

not have to increase captioning for more than six years from the effective date of the rules. Surely cable providers are able to increase the amount of captioning they provide faster than that.

In our comments on the NPRM, we stated our view that a two to three year time frame is much more reasonable.⁹ Requiring a shorter time frame is a position supported by organizations that represent consumers such as Self Help for Hard of Hearing People, Inc. (SHHH), which supports a two to three year time frame,¹⁰ the National Association for the Deaf (NAD), which recommends a three to four year time line,¹¹ and the National Council on Disability (NCD), which proposes a three year limit. NCD states:

“While the selection of any particular number of years is in a certain sense arbitrary, our long history with captioning, the wide dissemination of knowledge about and experience with captioning, the existence of a number of demonstrated techniques for captioning, and the awareness on the part of the industries in question that this requirement is mandatory, all lead to the conclusion that eight years represents a far more protracted period that should be needed by those who recognize the imperative of the law and simply get about the business of abiding by it. We believe that, on balance, three years ought to be sufficient for a smooth and effective transition.”¹²

CAN continues to believe that a maximum of three years is sufficient transition time.

We also propose that deaf and hard of hearing viewers receive a discount on their cable bill for programs that are not captioned during and after the transition period. It does not seem fair for subscribers to pay for services they cannot use.¹³

⁹Comments of CAN at 3.

¹⁰Comments of SHHH at 3.

¹¹Comments of the NAD at 4.

¹²Comments of the NCD at 2.

¹³This would be similar to the arrangement some long distance phone companies offer to TTY users. The TTY user receives a discount on long distance calls because using a TTY takes much longer than a comparable call using a voice phone.

IV. Library Programming

In the NPRM, the Commission sought comment on a transition schedule for library programming.¹⁴ In our earlier comments, we recommended that library programming that is exhibited be subject to the same phase-in timelines as new programming. We maintained that the 75% figure that the Commission proposes appears to be arbitrary and is unsupported by law.¹⁵ We stand by these comments.

We agree with NBC that captioning requirements for library programming should apply only to programming that is actually broadcast, not to material "that is simply sitting in a vault."¹⁶ No useful purpose would be served by captioning material that will not be broadcast, and resources that would be otherwise used on captioning aired material would be wasted. We urge the Commission to require 100% of library programming that is broadcast to be captioned within the same timelines as those for new programming.

V. Exemptions

Commenters have asked for exemptions for various types of programming. They have asked for an exemption for foreign language programming, citing the difficulties involved due to lack of captioners in the country of origin, the costs involved, and the small budgets of many stations that air this material.¹⁷ We recognize that these issues may make it more difficult to ensure that foreign language programming is captioned. However, we oppose a blanket exemption for foreign language programming, for the simple reason that larger providers may not experience difficulty in

¹⁴NPRM at ¶ 58.

¹⁵Comments of CAN at 10.

¹⁶Comments of NBC at 10.

¹⁷*See, e.g.,* Comments of Telemundo Group, Inc., Comments of Grupo Televisa, S.A.

captioning this programming. For smaller providers, a temporary exemption may be warranted, under the condition that, as Telemundo Group, Inc. suggests, there be a "reexamination of circumstances in the future."¹⁸

Commenters have asked for an exemption for local and regional sports, citing cost and viewership reasons.¹⁹ Because of the high interest in this programming, we do not support an exemption for it. An alternative to exemption could be, as NBC suggests, to allow a longer transition period.²⁰

Exemptions or allowance of a longer transition period for any class should be granted only on the condition that textual and graphic information summarizing the programming will be provided to the maximum extent reasonable.

In its NPRM, the Commission proposed not to exempt any class of provider.²¹ A group of public broadcasters has proposed that the Commission retreat from this position and proposes that public broadcasters as a class be exempt from the requirements of Section 713.²² We oppose this proposal. The Commission points out, "[W]e believe that a blanket exemption even for very small providers is unnecessary, because the various providers distribute the same types of programming to consumers, and all classes of providers appear to have the technical capability to deliver closed captioning to viewers intact."²³ Public broadcasters provide valuable news, informational, educational, and entertainment programming that is both unique and innovative. Public broadcasting has a long history of supporting closed captioning. As we know, closed captioned programming began on public

¹⁸Comments of Telemundo Group, Inc. at 8.

¹⁹*See, e.g.*, Comments of the Pacific-10 Conference.

²⁰Comments of NBC, Inc. at 6.

²¹NPRM at ¶ 85.

²²Joint Comments at 16.

²³NPRM at ¶ 85.

television. Public broadcasters should not be exempted as a class. If necessary, public broadcasters, like other broadcasters, can avail themselves of exemption provisions of Section 713 (d).

Some commenters propose that the Commission exempt "all existing programming contracts that do not affirmatively provide for closed captions."²⁴ Granting such exemptions would be misguided. First, the statute does not require affirmative steps in order to impose a captioning requirement. On the contrary, it imposes a duty to caption except as provided in 713 (d), which lists the exemptions. Section 713 (d) (2) allows exemptions if the obligation to supply closed captioning "would be inconsistent with contracts in effect on the date of enactment of the Telecommunications Act of 1996" The requirement to caption is not necessarily inconsistent with contracts which lack an affirmative obligation to caption. Without a statutory duty to provide captions, no doubt many producers, owners, and providers never even considered inserting closed captions when the program was produced or purchased. Relief from statutory obligation should not be granted in such a circumstance.

We do recommend that the Commission allow for *de minimus* exemptions for unavoidable or unanticipated occurrences. However, we caution the Commission to act conservatively in setting standards for these exemptions. NCTA, for example, states that some programming "may be delivered virtually hours before airing," thus making it "impossible to send the program out to be captioned and air it at the scheduled time."²⁵ But when turnaround time is short, captioners can break up shows into smaller time frames to caption the program more quickly. A one hour show can be broken

²⁴See, e.g., Comments of NCTA at 19 and Comments of the A&E Television Networks, the History Channel and Ovation at 25.

²⁵Comments of NCTA at 7.

up into four or more pieces for as many captioners, and the 20-30 hours it usually takes to caption can become five hours or less. The Commission should consider such alternatives in deciding how to grant *de minimus* exemptions.

Such exemptions should be able to be applied to no more than three percent of otherwise non-exempt programming.

VI. Standards for Quality

In our original comments, we emphasized the importance of the Commission's requiring captioning to meet standards for quality.²⁶ VITAC presents convincing reasons why the accuracy of captioning is so important. "For the viewer who cannot hear, the extent to which they must trust the accuracy of the captions is overwhelming. If the wrong word is given, or if words are misspelled or missing, the consumer has little recourse to clear up any miscomprehension."²⁷ VITAC points out, "Consider the ramifications of omitting the word 'not' in a caption which advises that viewers 'should not leave their homes during the storm.'"²⁸

We agree with VITAC's recommendation that "[F]or a program to meet any mandate to be captioned, the program must be captioned completely from start to finish, and that those captions must be as close to verbatim as technically possible, with virtually all words spelled correctly."²⁹

Captioning technology is not new: it has been with us for over 20 years. We have seen high quality captioning from a number of providers. We know the VITAC standard, as well as minimum standards put forth by

²⁶Comments of CAN at 15.

²⁷Comments of VITAC at 9.

²⁸*Id.* at 11.

²⁹*Id.*

the NAD, CAN, and others, can be met immediately. More detailed quality standards can be required at a later time.

The National Association of Broadcasters (NAB) maintains that when a program arrives at a broadcast station already captioned, with its captions intact, the captions are passed along with the program automatically while it is being broadcast. For this reason it concludes that a Commission rule requiring transmission of intact captions is not necessary.³⁰ However, as the Commission points out in its Report, captions can be stripped, moved to the wrong line of the VBI or flipped onto the wrong field of line 21.³¹ In our comments to the NOI, CAN described a typical experience of a viewer: "When we had cable, we had to call about once a month to tell the cable company that they had failed to turn on the captioning for a program we knew was captioned. This was common for nationally transmitted shows."³² Although it may seem obvious that captions would automatically be passed through, this is not always the case.

High quality captioning will not be ensured by marketplace competition alone. When a caption company sells captioning, it sells to a producer or programmer, not deaf and hard of hearing viewers. Without minimum standards required by the Commission, it will be up to the producer or programmer to decide what level of quality is high enough. While undoubtedly many will ensure that only the highest quality captioning will be used, others may not. Deaf and hard of hearing viewers prefer to rely on Commission rules and enforcement mechanisms to ensure a minimum quality standard of captioning.

³⁰Comments of NAB at 8.

³¹*In the Matter of Closed Captioning and Video Description of Video Programming*, MM Docket No. 95-176, Report, FCC 96-318.

³²Comments of CAN on the Notice of Inquiry at 15.

VII. Monitoring and Enforcement

Commentators remarked on their preference to self-enforce their own quality standards.³³ On the other hand, the National Captioning Institute (NCI) suggests that captioning service distributors be required to provide a "simple annual report to the FCC regarding the quality and accuracy of their captioning services. These reports, which would be available for public inspection, would cover such matters as: spelling accuracy; accuracy of transcription; punctuation; placement; identification of nonverbal sounds; and such other matters as the Commission deems appropriate."³⁴ NCI continues, "This procedure would impose very little real cost on caption providers or distributors -- who should already be undertaking the kind of self-policing that would readily generate the type of report we envision -- while at the same time bringing great benefit to the sizeable audience which is critically dependent upon high quality, accurate captions."³⁵ We agree, although we suggest that this report be filed monthly rather than annually. Filing monthly will require little effort, while at the same time giving the Commission and consumers the opportunity to be informed of the progress toward meeting the regulatory time lines. It is absolutely essential to have some simple, systematic way to track this progress. For deaf and hard of hearing viewers, the prospect of no requirement of standards for accuracy combined with no systematic monitoring of captioning is alarming.

Commenters proposed various time frames for measurement of compliance with Section 713 requirements³⁶ We recognize that, due to the periodic nature of special programming, a one month snapshot may give a

³³See, e.g., Comments of CBS Inc. at 25.

³⁴Comments of NCI at 15.

³⁵*Id.*

³⁶See, e.g., Comments of CBS at 25 ("a time period no shorter than one month"), Comments of NCTA at 17 ("annual, calendar year").

more comprehensive view of the amount of programming that has been captioned. We propose a time period no longer than one month.

In its proposed guidelines on standards of quality, CAN addressed, among other things, the need for reformatting of captions.³⁷ Reformatting is required when a program is captioned but the program is edited to be shown in a shorter time frame. We suggested that the Commission require that in this situation the provider be required to reformat and air the captions. Commenters such as CBS suggest that providers should not be required to reformat captions that have been transmitted to them if the provider is otherwise meeting its obligations under the Commission's rules. CBS states that "[t]here are circumstances in which reformatting a program will involve as much cost as the original captioning."³⁸ As an example, they mention the case where the provider does not have access to the master tape from which the captions were originally time-encoded. As the NAD³⁹ and CAN⁴⁰ point out in the original comments, Commission rules should require that the master tape be labeled to ensure that the master tape is used for duplication as the program moves through the distribution chain. If the Commission adopts this rule, this problem can be eliminated. Further, program editors can work with caption agencies to develop more efficient editing and reformatting procedures.

Normally, the cost of reformatting is far less than the cost of captioning. It is far more efficient to reformat than it is to completely rewrite captions. Requiring that the master tape be distributed and requiring

³⁷Comments of CAN at 17.

³⁸Comments of CBS at 11.

³⁹Comments of the NAD at 25.

⁴⁰Comments of CAN at 17.

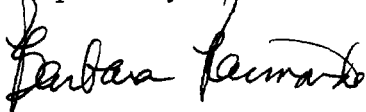
reformatting will result in captioning being done in an efficient, cost-effective manner, thus ensuring that more captioned material is available.

We reiterate our support for the Commission to establish a council for the resolution of complaints in addition to regular Commission complaint procedures. Such a proposal was outlined in our original comments,⁴¹ as it was in the comments of the NAD.⁴²

VIII. Conclusion

Deaf and hard of hearing viewers nationwide look forward to the increase in captioned video programming that will result from implementation of Section 713. We encourage the Commission to promulgate rules that will quickly increase the supply of closed captioned video programming. We thank the Commission for the opportunity to comment, and we applaud the Commission's commitment to making greater access to video programming a reality for all Americans.

Respectfully submitted,



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⁴¹*Id.* at 19.

⁴²Comments of the NAD at 28.

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